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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

AUSTIN HIEATT,

Defendant and Appellant.

B290085

(Los Angeles County
Super. Ct. No. PA088078)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Hilleri G. Merritt, Judge. Affirmed.

Rachel Varnell, under appointment by the Court of Appeal,
for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Jason C. Train and David W. Williams, Deputy
Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Austin Hieatt pled no contest to two counts of second degree robbery (Pen. Code, § 211;¹ counts 1 & 5).² He admitted personally using a handgun during the commission of one robbery (§ 12022.53, subd. (b)) and one prior strike allegation (§§ 667, subds. (b)-(j), 1170.12).

Pursuant to the terms of the negotiated plea agreement, the trial court sentenced defendant to 18 years in prison: six years for count 5, plus two years for count 1, and 10 years for the firearm enhancement. Various fines and fees were imposed. Defendant received 465 days of presentence custody credit. The trial court issued a certificate of probable cause, and defendant filed a notice of appeal.

On appeal, defendant argues that pursuant to *People v. Hurlic* (2018) 25 Cal.App.5th 50 (*Hurlic*), his case must be remanded so that the trial court can exercise its discretion as to whether to lessen defendant's sentence pursuant to amended section 12022.53, subdivision (h).

We affirm.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

² As part of the plea deal, the prosecutor dismissed additional charges for child abuse (§ 273a, subd. (a)), assault with a semiautomatic firearm (§ 245, subd. (b)), identity theft (§ 530.5, subd. (a)), and theft of access card information (§ 484e, subd. (d)).

FACTUAL AND PROCEDURAL BACKGROUND

I. *Factual Background*³

On January 26, 2017, defendant walked up to Janell Acosta, who was standing in an alley and sending a text message at the time, and demanded everything she had. He was pointing a black, semiautomatic pistol at her chest. Defendant took her cell phone and purse and walked away. Acosta went back to her office, and a coworker called the police. She then called her banks and learned that four unauthorized purchases had been made at local Wal-Marts, using credit cards from her purse.

On January 31, 2017, defendant and Jahwan Tsavidis (Tsavidis) grabbed Beverly Sewell's purse off her shoulder in a parking lot. Tsavidis and defendant ran away with the purse. They were arrested shortly thereafter.

II. *Procedural Background*

Defendant was charged in February 2017. A preliminary hearing was held in mid-August 2017, and the information was filed on August 31, 2017. At that time, defendant pled not guilty to all counts and denied all enhancements.

On January 17, 2018, defendant changed his plea. He pled no contest to robbery (counts 1 & 5) and admitted a section 12022.53 firearm enhancement. As part of his plea, defendant agreed that he would be sentenced to a 10-year term for a section 12022.53 enhancement.

On March 9, 2018, the trial court sentenced defendant in accordance with the plea agreement: eight years for the two robberies, plus 10 years for the firearm enhancement.

³ Because this appeal only pertains to sentencing issues, we briefly state the facts.

DISCUSSION

“On October 11, 2017, the Governor signed Senate Bill No. 620 (2017-2018 Reg. Sess.) into law, effective January 1, 2018. Senate Bill No. 620 amended section 12022.53 to grant trial courts, for the first time, the discretion to strike section 12022.53’s firearm enhancements. [Citation.]” (*Hurlic, supra*, 28 Cal.App.5th at p. 54.) According to defendant, even though he was sentenced after the new law went into effect, pursuant to *Hurlic*, his sentence must be remanded for the trial court to exercise its discretion. We are not convinced.

In *Hurlic*, the defendant was charged with various crimes. In March 2017, he entered a no contest plea to a single count and admitted to a 20-year sentencing enhancement. In September 2017, the trial court imposed the agreed-upon sentence. (*Hurlic, supra*, 28 Cal.App.5th at pp. 53–54.) On October 31, 2017, after the Governor signed Senate Bill No. 620 (but before it became effective), defendant timely filed a notice of appeal. (*Hurlic, supra*, at p. 54.) No trial court issued a certificate of probable cause. (*Ibid.*)

The Court of Appeal determined that the defendant was not required to obtain a certificate of probable cause and remanded the matter to the trial court to exercise its discretion whether to lessen the defendant’s sentence pursuant to the newly amended section 12022.53, subdivision (h). (*Hurlic, supra*, 28 Cal.App.5th at p. 59.)

In this case, unlike in *Hurlic*, both defendant’s no contest plea and his sentencing occurred after Senate Bill No. 620 took effect on January 1, 2018. While Senate Bill No. 620 was not mentioned, we can infer that it was part of the plea negotiations and sentence imposed. (See, e.g., *People v. Blackburn* (2015) 61

Cal.4th 1113, 1124 [defense “counsel is already presumed to know the law”]; *People v. Reyes* (2016) 246 Cal.App.4th 62, 82 [trial court is presumed to have been aware of and followed the applicable law when imposing a sentence].)

In urging us to remand the matter for resentencing, defendant argues that “most likely because he pled, the trial court did not make a decision on the record as to whether to strike the 12022.53 enhancement.” Aside from this contention being speculative, nothing in Senate Bill No. 620 requires trial court judges to make decisions on the record. And we do not presume error from a silent record. (*People v. Brown* (2007) 147 Cal.App.4th 1213, 1228.) Rather, without any contrary indication, we must presume that the attorneys negotiated defendant’s sentence and the trial court imposed it, with Senate Bill No. 620 in mind.

DISPOSITION

The judgment is affirmed.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT